

THIS DRAFT ETA IS TO BE USED SOLELY FOR DISCUSSION PURPOSES. UNDER NO CIRCUMSTANCES IS THIS DRAFT ETA TO BE USED TO DETERMINE TAX LIABILITY OR ELIGIBILITY FOR A TAX DEDUCTION, EXEMPTION, OR CREDIT.

Non-Fungible Tokens (NFTs)

Scope

This Excise Tax Advisory (ETA) replaces the guidance in the Department’s July 1, 2022, interim statement regarding the taxability of NFTs, as well as any previous rulings or written reporting instructions provided to taxpayers that conflict with the guidance in this ETA. This ETA includes the following topics:

- Definitions and terms
- Overview of NFTs and taxability
- Selling price
- Sourcing
- Bundled transactions
- Marketplace Facilitators and marketplace sellers
- Apportionment of non-retail activities
- Royalties, burning, and minting
- Use tax
- Reselling activities

This ETA identifies broad concepts and issues specific to NFTs and provides general guidance on how the business and occupation (B&O), retail sales, and use tax apply to transactions involving NFTs. This ETA does not address the advanced computing surcharge in RCW 82.04.299, any exemptions, exclusions, deductions, credits, other incentives that may apply, or the capital gains tax.

The examples found in this guidance identify a number of facts, and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

Taxpayers are encouraged to request a [binding tax ruling](#) from the Department in order to confirm their tax obligations for a particular business activity.

This ETA is effective XXX. The NFT market is emergent, and the Department recognizes there was confusion regarding the tax treatment of NFTs. If you have not reported as described in this ETA, please contact the Department: DORNFTQuestions@DOR.WA.GOV. The Department may have options to assist you in reporting correctly. The Department will not issue refunds for taxes validly paid.

Definitions and terms

The following definitions apply to this ETA and may not generally apply in other circumstances:

“**Blockchain**” refers to a digital database containing information (such as records of financial transactions) that can be simultaneously used and shared within a large decentralized, publicly accessible network.¹

“**Burning**” is the process of permanently removing tokens from circulation.²

“**Digital automated services**” means services transferred electronically that use one or more software applications, subject to the exclusions in RCW 82.04.192(3)(b) and WAC 458-20-15503(303).³

“**Digital code**” means a code that provides a purchaser with the right to obtain one or more digital products. “Digital code” does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser.

“**Digital good**” means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, subject to exclusions in RCW 82.04.192(6)(b) and WAC 458-20-15503(302).⁴

“**Minting**” is the process of publishing an NFT, representing ownership of an underlying asset, on the blockchain.⁵

“**Non-fungible token**” is a unique digital identifier that cannot be copied, substituted, or subdivided, that is recorded in a blockchain, and that is used to certify authenticity and ownership of a specific type of product.⁶ NFTs are distinguishable from cryptocurrency, which is a type of fungible token.

Common NFT scenarios

The following are commonly seen scenarios involving NFTs:

The NFT is used to obtain:

- A standalone digital code (i.e., the NFT is a digital code that provides the purchaser with the right to obtain a digital good). Examples include digital artwork, photographs, video clips, autographs, etc.

¹ “blockchain,” *Merriam-Webster.com* dictionary, <https://www.merriam-webster.com/dictionary/blockchain>. Accessed 11/13/2023.

² Reiff, Nathan. “What Does It Mean to Burn Crypto? Practical Applications.” *INVESTOPEDIA*, <https://www.investopedia.com/tech/cryptocurrency-burning-can-it-manage-inflation/>. Accessed 22 May 2023.

³ RCW 82.04.192(3)(a); WAC 458-20-15503(203).

⁴ RCW 82.04.192(6); WAC 458-20-15503(202). None of the exclusions listed in RCW 82.04.192(6)(b) or WAC 458-20-15503(302) include NFTs.

⁵ NFTs and intellectual property - Practical Law the Journal, Reuters (2023), <https://www.reuters.com/practical-law-the-journal/transactional/nfts-intellectual-property-2023-02-01/> (last visited Nov 8, 2023).

⁶ “non-fungible token,” *Merriam-Webster.com* dictionary, <https://www.merriam-webster.com/dictionary/non-fungible%20token>. Accessed 11/13/2023. (See generally <https://www.investopedia.com/non-fungible-tokens-nft-5115211> (3 Nov. 2023), Non-fungible tokens (NFTs) are assets that have been tokenized via a blockchain. They are assigned unique identification codes and metadata that distinguish them from other tokens.)

- A standalone good or service (other than a digital product) classified as a retail sale under RCW 82.04.050. Examples include merchandise, apparel, prepared foods and beverages, etc.
- A standalone good, service, or other item of value (other than a digital product) not classified as a retail sale under RCW 82.04.050. Examples include admission to a spectator event (such as a concert or sporting event), certain memberships, professional services, etc.
- Any combination of two or more of the above.

The NFT is sold or used in the following ways:

- A sale of an NFT by its creator directly to a purchaser, who is either a reseller or consumer.
- A sale of an NFT by a reseller to a purchaser, who is the consumer.
- A sale of an NFT through a marketplace facilitator to a purchaser, who is either a reseller or consumer.
- The use of an NFT by its creator.
- The use of an NFT by a purchaser.

General discussion on NFT taxability

How are NFTs taxed?

NFTs represent digital items that can be owned, sold, or traded. An NFT typically grants ownership of, or a right to, something of value. For example, an NFT may grant ownership in a tangible good (like physical artwork), a digital good (like an audio file), service (like supply chain management), or a right to receive something of value (like admission to a concert). In some cases, the NFT is itself a digital good. When someone purchases, exchanges, or trades an NFT, that transaction may be subject to B&O tax and retail sales tax or use tax. The mere ownership of an NFT may also result in a taxable event, depending on whether a taxable use has occurred. To determine the proper tax treatment of a transaction involving an NFT, it is critical to consider the following:

- 1) The underlying product (e.g., a good, service, or other item of value) that is represented by the NFT;
- 2) Whether the transaction involves only one product (e.g., a physical painting) or more than one product (e.g., a ticket to a concert, a signed photograph of the performing artist, and a digital code allowing the purchaser to download the artist's new album);
- 3) The B&O and possible retail sales tax treatment of each underlying product; and,
- 4) The identity of the parties to the transaction (e.g., is the purchaser a consumer or reseller?).

Application of Considerations 1 through 4:

If an NFT represents ownership of only one product, the B&O and retail sales tax treatment is determined by the nature of the underlying product. For example, if the underlying product is tangible personal property, the sale of the NFT is treated as the sale of tangible personal property. If the purchaser is a consumer and the sale is deemed to take place in Washington, the sale is generally subject to B&O tax under the retailing classification, and the seller must collect retail sales tax.

If an NFT represents the ownership of two or more distinct and identifiable products for one nonitemized price, and the purchaser is a consumer of the products, the sale or exchange of the NFT is a bundled transaction. (See Examples 3 and 4 in the “Bundled Transactions” section below for general guidance.)

For more information on the taxation of digital products, see the Department’s guide to [Digital products including digital goods](#).

What records should a seller retain?

Taxpayers, including sellers, are responsible for retaining appropriate records pursuant to RCW 82.32.070 and WAC 458-20-254. Taxpayers must keep, preserve and present these records to the Department upon request. NFT sellers are responsible for maintaining records necessary to substantiate the nature, character, and sourcing of each sale. For more information on the type of records that must be maintained, see WAC 458-20-254(3).

NFT selling price

Determining the Selling Price of an NFT

Generally, the selling price of an NFT is measured by the consideration received by the seller, whether from the purchaser or a third party. (See RCW 82.08.010 and WAC 458-20-108.) The Department anticipates that, in some cases, consideration will be in the form of a cryptocurrency. If a seller receives cryptocurrency in exchange for an NFT, the value of the cryptocurrency tendered is measured in US dollars as of the time of the sale.^{7,8}

**Retail sales of NFTs – How are retail sales of NFTs sourced?
Sourcing**

⁷ An example of a cryptocurrency pricing index is the [WorldCoinIndex](#) (website). WorldCoinIndex is an online pricing index for hundreds of cryptocurrencies. The index tracks cryptocurrency values by computing their average (weighted) value across the world’s cryptocurrency exchanges.

⁸ Washington State Department of Revenue, *Interim Guidance Statement Regarding Bitcoin, Payments, Minting, and Investment Income*: <https://dor.wa.gov/interim-statement-regarding-bitcoin-payments-mining-and-investment-income>.

“Sourcing” means the location in which the sale or use is deemed to occur for tax purposes. Retail sales of NFTs must be sourced under rules identified in RCW 82.32.730(1)(a)-(e). On high-level, retail sales are sourced as follows:

- (a) The seller’s business location, if the purchaser’s receipt occurs at that location;
- (b) Other location of receipt by the purchaser;
- (c) The purchaser's address maintained in the seller's ordinary business records;
- (d) The purchaser's address obtained at the consummation (i.e., completion) of the sale;
- (e) Origin sourcing.

See RCW 82.32.730(1)(a)-(e) for additional detail.

These sourcing rules apply in a descending order of priority, meaning that if the seller can apply (a), then seller must apply (a). If (a) does not apply, the seller must consider whether (b) applies. If the requirements in (b) do not apply, then the seller must determine whether (c), then (d), or then (e) of this subsection applies respectively, and apply the applicable sourcing provision.

For purposes of the above sourcing hierarchy, "receive" and "receipt" mean taking possession of tangible personal property, making first use of digital automated services or other services, or taking possession or making first use of digital codes, whichever comes first. RCW 82.32.730(9)(f).

Example 1 – Receipt at seller’s place of business (NFT represents ownership of tangible personal property)

Facts: Kennewick Microbrewery LLC (“KM”) operates a microbrewery in Kennewick, Washington. In order to generate excitement for its latest beer offerings, KM creates and sells 100 NFTs for \$50.00 per NFT. Each NFT features a unique piece of digital art that also functions as a ticket that entitles the NFT holder to attend a free tasting event at KM’s microbrewery. Each holder may redeem the NFT for beer, which KM serves at the KM microbrewery. The digital art holds no resale or residual value distinct from the value of the beer. Sara purchases an NFT for \$50 and also pays the state and local sales tax for Kennewick.

Result: Because the product underlying the NFT is a retail sale of a prepared beverage, which the buyer receives at the seller’s business location, KM must apply RCW 82.32.730(1)(a) and source each \$50.00 NFT sale to KM’s business location in Kennewick. The state and local sales tax amounts must be collected at the combined rate for Kennewick.

Example 2 – Address in seller’s records (NFT represents ownership of a digital good only)

***Facts:** NFT Dropbox LLC (“NFT Dropbox”) operates an NFT marketplace from its corporate headquarters in Seattle, Washington. Cal purchases an NFT from NFT Dropbox that represents ownership of a digital image and adds it to his digital wallet. NFT Dropbox does not know where Cal received the digital image. However, the contract from the sale lists Cal’s home address in Puyallup, Washington.*

***Result:** NFT Dropbox must apply RCW 82.32.730(1)(c) and source the sale to Cal’s home address in Puyallup, which is the purchaser’s address maintained in the seller’s ordinary business.*

Bundled transactions

An NFT may entitle a purchaser to obtain multiple goods, services, and other items of value (e.g., digital products, such as music, visual, video works, or video games; admissions to non-retail sales taxable events, such as tickets to clubs, sporting events, or concerts; prepared foods; and tangible personal property, such as memorabilia, collectibles, or apparel).

In these circumstances, the sale of an NFT may be a “bundled transaction” as defined by RCW 82.08.190. A bundled transaction is the retail sale of two or more products for one nonitemized price, where the products are otherwise distinct, identifiable, and no exclusion in RCW 82.08.190(4) applies. A bundled transaction is subject to retail sales tax if the sale of any of its component products is subject to retail sales tax. RCW 82.08.195.

Determining whether an NFT itself is a digital good in the context of a bundled transaction

The taxpayer must establish that the NFT itself is not a digital good subject to tax. Factors that contribute to the characterization of an NFT as a distinct and identifiable digital good include:

- The NFT is individually sold elsewhere;
- There is a third-party retail market for the NFT; or
- The NFT has a value separate from any other product(s), e.g., resale or residual value.

Example 3 – Bundled transaction of NFT that provides ownership of a digital code and a right to obtain a non-retail service

***Facts:** South Capitol Rock Band (“South Capitol”) is based in Olympia, Washington. South Capitol sells NFTs of the band’s songs, which provide ownership of a digital good (digital music). As part of the single nonitemized selling price, the buyer obtains a concert ticket to the band’s upcoming performance at the Gorge Amphitheatre in Grant County, Washington. Louisa, who resides in Olympia, purchases the NFT from South Capitol. South Capitol obtains and maintains business records of Louisa’s address in Olympia. In addition, the sales price of the digital*

music is greater than 10 percent of the sales price of the concert tickets, so the de minimis exclusion from a bundled transaction does not apply. No other bundled transaction exclusion applies.

Result: The sale is comprised of two distinct and identifiable products sold for one nonitemized price, a digital good (digital musical recording) and a non-retail service (admission to a live concert). If sold separately, the sale of the digital good to a consumer is subject to retail sales tax and retailing B&O tax, while the gross income for admission to a concert is subject to the service and other activities B&O tax.

This transaction is a bundled transaction under RCW 82.08.190, and subject to taxation under RCW 82.08.195(7). The entire selling price is subject to retail sales tax and retailing B&O tax, unless the seller can identify by reasonable and verifiable standards from its books and records that are kept in the regular course of business that retail sales tax does not apply to the portion of the selling price attributable to the concert admission.

Example 4 — Sale of NFT that includes future right to unspecified products

Facts: The Puget Sound Social House (“PSSH”) is an exclusive, members-only social club in Seattle, Washington. PSSH lists twenty NFTs for sale that provide holders access to potential unspecified future events held by PSSH and to receive collectible digital art that PSSH may create in the future. PSSH priced the NFTs at \$1,000.00 each. Each NFT includes an image of the PSSH logo that also serves as a ticket to future unspecified events and validation to claim future digital art. Willy McHarland, who lives in Tekoa, Washington, purchases an NFT. Willy receives the NFT in Tekoa. As part of the sale, PSSH obtains Willy’s physical address in Tekoa.

Result: A "sale" includes a transfer of the ownership of title to, or possession of property, for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. Under these facts, consideration is provided to receive a digital good because no other distinct and identifiable products are contemplated at the time of sale. The sale of a digital good is a retail sale under RCW 82.04.050. Accordingly, there is no bundled transaction, but the sale is subject to retail sales tax and retailing B&O tax. PSSH must collect retail sales tax from Willy at the combined state and local rate for Tekoa.

Overview of NFT marketplaces

Persons operating marketplaces that facilitate retail sales of NFTs generally fall within the definition of a “marketplace facilitator” for Washington tax purposes. RCW 82.08.010(15). These marketplace facilitators must register, report, and pay tax on transactions conducted through their marketplaces as described below. Marketplace sellers must also register, report, and pay tax as described below.

“Marketplace” means a physical or electronic place, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, digital codes and digital products, or services are offered for sale. RCW 82.08.010(14).

A **“marketplace seller”** is a business that makes retail sales through either a physical or electronic marketplace operated by a marketplace facilitator. RCW 82.08.010.

When is an NFT marketplace operator a marketplace facilitator?

An operator of an NFT marketplace or platform is a marketplace facilitator when it:

1. Contracts with sellers to facilitate the sale of a marketplace seller’s product through a marketplace for consideration, including when sales of NFTs are executed and recorded on a public blockchain;
2. Engages, directly or indirectly, in transmitting or otherwise communicating the offer or acceptance between a buyer and seller of NFTs, including but not limited to when it is directly or indirectly involved in transmitting or communicating the offer and acceptance through the use of a web3⁹ protocol (or similar methods existing now or later developed), and regardless of whether the delivery of an NFT by a seller (and consideration by a buyer) is recorded on a public blockchain; and
3. Engages, directly or indirectly, with respect to the seller's products in any one of the following activities:
 - Provides payment processing services;
 - Provides fulfillment or storage services;
 - Lists products for sale;
 - Sets prices;
 - Brands the sales as if the marketplace operator was the seller;
 - Takes orders; or,
 - Provides customer service or accepting or assisting with returns and exchanges.

A person does not need to process payments to meet the definition of a marketplace facilitator.

NFT marketplace participants – Registration,

Registration Requirements
NFT Marketplace Facilitators

⁹ “web3,” *blockchaincouncil.org* glossary, <https://www.blockchain-council.org/glossary/web3-glossary/>. Accessed March 20, 2024. Web3 is “...a more decentralized and user-centric internet built on blockchain and decentralized technologies.”

reporting, and other obligations

NFT marketplace facilitators must register in Washington if in the current or immediately preceding calendar year, they:

- Have more than \$100,000 in combined gross receipts sourced or attributed to Washington (nexus), including gross receipts from sales made on behalf of marketplace sellers;
- Have physical presence (nexus) in Washington;
- Have marketplace sellers with physical presence in Washington; or,
- Are organized or commercially domiciled in Washington. RCW 82.08.0531(2) and RCW 82.08.052(1), (2).

NFT Marketplace Sellers

NFT marketplace sellers must register if they:

- Have a physical presence in Washington;
- Have in the current or immediately preceding calendar year more than \$100,000 in combined gross receipts sourced or attributed to Washington, including gross receipts from facilitated transactions; or
- Are organized or commercially domiciled in Washington.

Reporting Requirements

NFT Marketplace Facilitators

NFT marketplace facilitators required to be registered in Washington must report their gross income from retail sales, as identified in RCW 82.04.050, of NFTs (including revenue from NFT sales made on behalf of NFT marketplace sellers) under the retailing B&O tax classification. NFT marketplace facilitators are eligible to claim a deduction from the retailing B&O tax classification for NFT gross income from sales made on behalf of marketplace sellers.¹⁰ NFT marketplace facilitators cannot deduct the gross income from their own direct sales (sales made on the facilitator's own behalf).

If the NFT marketplace facilitator has gross income attributable to Washington from other activities, the taxpayer must report that gross income under the appropriate tax classification. For example, NFT marketplace facilitators that generate revenue in the form of commissions, fees, or other charges for performing their facilitation services, attributable to Washington must generally report under the service and other activities B&O tax classification on such proceeds. RCW 82.04.290(2).

NFT marketplace facilitators must also collect and remit retail sales tax on the selling price of all taxable retail sales sourced to Washington at the combined state

¹⁰ See RCW 82.04.480 and WAC 458-20-282.

and local rate as determined by the specific location (city, county, or other locality) where the sale is deemed to occur, unless an exemption applies.¹¹

NFT Marketplace Sellers

Registered NFT marketplace sellers must report their gross revenue from retail sales of NFTs under the retailing B&O tax classification, unless the sale is for resale as described in WAC 458-20-102.

NFT marketplace sellers are eligible to claim a retail sales tax deduction for NFT sales made by a marketplace facilitator on their behalf,¹² but cannot deduct direct sales (sales made on the marketplace seller's own behalf). In the case of direct sales, NFT marketplace sellers must collect and remit retail sales tax on the selling price at a combined state and local rate as determined by the specific location (city, county, or other locality) where the sale is sourced, unless an exemption applies.

Monthly Report to NFT Marketplace Sellers

NFT marketplace facilitators must provide their NFT marketplace sellers with access, through a written report or other means, to the marketplace seller's monthly gross Washington sales made on their behalf. RCW 82.08.0531(4)(a). For more information, see the Department's [Marketplace facilitators](#) guide. Taxpayers with questions about whether they qualify as a marketplace facilitator are encouraged to request a binding tax ruling.

Example 5 — Marketplace facilitator's registration and reporting requirements

Facts: Jiffy NFTs Global ("Jiffy") is located in California. Jiffy lists NFTs sold by third parties at retail on its website and mobile application. None of the sales listed are for resale. All NFTs sold by Jiffy represent a digital good (digital image). Jiffy communicates the offer and acceptance between the seller and buyer for the sale of NFTs using its smart contract protocol. The protocol automates the offer and acceptance process via a public blockchain. Jiffy uses a third-party to process the payments. Jiffy receives a 3% commission from sellers on NFTs sold via its platform and had more than \$100,000 of cumulative gross receipts from Washington in the immediately preceding calendar year.

Result: Jiffy is a marketplace facilitator, as it meets all three requirements of the marketplace facilitator definition under RCW 82.08.010(15)(a). Jiffy:

- 1. Contracts with sellers to facilitate the sale of a marketplace seller's product through a marketplace for consideration, including when sales of NFTs are executed and recorded on a public blockchain;*

¹¹ Unless otherwise exempted from retail sales tax elsewhere in statute (e.g., certain food sales, prescription drugs, sales to Indians or Indian Tribes in their Indian Country).

¹² See WAC 458-20-282.

2. *Engages, directly or indirectly, in transmitting or otherwise communicating the offer or acceptance between a buyer and seller of NFTs, including but not limited to when it is directly or indirectly involved in transmitting or communicating the offer and acceptance through the use of a web3¹³ protocol (or similar methods existing now or later developed), and regardless of whether the delivery of an NFT by a seller (and consideration by a buyer) is recorded on a public blockchain; and*
3. *Engages, directly or indirectly, with respect to the seller's products in any one of the following activities:*
 - *Provides payment processing services;*
 - *Provides fulfillment or storage services;*
 - *Lists products for sale;*
 - *Sets prices;*
 - *Brands the sales as if the marketplace operator was the seller;*
 - *Takes orders; or,*
 - *Provides customer service or accepting or assisting with returns and exchanges.*

In this example, Jiffy lists the sellers' NFTs for sale, thus, Jiffy must register with the Department and report its gross revenue from retail sales of NFTs (including direct sales and sales made on behalf of its marketplace sellers) under the retailing B&O tax classification. Jiffy may be eligible to claim a deduction from the retailing B&O tax classification from sales made by Jiffy on behalf of its marketplace sellers.

Jiffy must also collect and remit retail sales tax on all taxable retail sales sourced to Washington at the applicable combined state and local rate.

Jiffy is subject to the service and other activities B&O tax on the commissions it receives from sales attributed to Washington. RCW 82.04.290(2).

Example 6 — Marketplace seller's registration and reporting requirements

Facts: Same facts as Example 1 above, including that Yasmeen, a New York artist, had \$200,000 in retail sales of NFTs made through Jiffy's marketplace that were sourced to Washington for the current calendar year. Yasmeen has no physical presence nexus with Washington.

Result: Yasmeen must register with the Department and report excise taxes for the current and the following calendar year.¹⁴ Yasmeen is not required to collect or

¹³ "web3," [blockchaincouncil.org](https://www.blockchain-council.org/glossary/web3-glossary/) glossary, <https://www.blockchain-council.org/glossary/web3-glossary/>. Accessed March 20, 2024. Web3 is "...a more decentralized and user-centric internet built on blockchain and decentralized technologies."

¹⁴ For more information and thresholds for past periods, see the Department's [Out of state businesses reporting thresholds and nexus](#) guide.

remit retail sales tax on the sales sourced to Washington, because Jiffy is doing so on her behalf. WAC 458-20-282(301)(a)(ii).

Jiffy must provide a written report or access to gross sales information for all Washington sales facilitated on Yasmeen's behalf during the immediately preceding month. WAC 458-20-282(501)(a). While Yasmeen does not collect the retail sales tax for the sales made through Jiffy, Yasmeen is subject to retailing B&O tax on the \$200,000 in retail sales sourced to Washington for the current calendar year and must remit tax under the retailing B&O tax classification.

**Other NFT activities:
Royalties, minting,
and burning**

In addition to buying and selling NFTs, there are a number of other NFT-related activities that may be subject to Washington taxes. In this section, we address the tax consequences for some, but not all, of the other NFT activities.

Royalties from use of NFTs

Persons engaging within this state in the business of receiving income from royalties are subject to the royalties B&O tax classification. "Gross income from royalties" means compensation for the use of intangible property, including charges in the nature of royalties. "Intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. Royalty income is generally attributed to Washington, according to where the intangible property will be used by the customer. RCW 82.04.2907, 82.04.460 and WAC 458-20-19403.

Minting NFTs

"Minting" is the process of publishing an NFT, representing ownership of an underlying asset, on a blockchain. Minting an NFT is not a taxable event if not conducted in exchange for consideration. However, use tax, as described in the section below, may apply.

Burning NFTs

"Burning" is the process of permanently removing tokens from circulation. Burning an NFT for another person in exchange for consideration is subject to retailing B&O tax and retail sales tax. If the burning was not done for another person in exchange for consideration, the transaction could be subject to use tax, as described in the section below.

Use Tax

Washington's use tax applies to certain products, including NFTs, used in Washington when retail sales tax has not been paid. RCW 82.12.020. This includes NFTs that are purchased for personal or business use, and includes NFTs that are self-produced for business use. WAC 458-20-178(4)(e).

Valuing self-produced NFTs for use tax purposes

A person who produces and then uses a self-produced NFT may owe use tax, which will be due the value of the NFT on the first taxable use in Washington. The value of the NFT is determined as nearly as possible according to the retail selling price at the time and place of use of similar NFTs of like quality and character. (See RCW 82.12.010(7)(a) and WAC 458-20-178, WAC 458-20-17803.)

If the NFT grants ownership to some other underlying product other than the NFT itself, such as retail sales taxable tangible personal property, services, or digital product, the first taxable use and valuation is determined by the value of that underlying product.

When taxable use occurs, taxpayers must file a use tax return (available on the Department of Revenue's website). For more information, see the Department's [Use Tax](#) webpage. If a taxpayer is already registered with the Department and reporting taxes, use tax is reportable on the taxpayer's combined excise tax return.

Example 7 – NFT used for a commercial purpose

Facts: FluidX LLC ("FluidX") is a graphic design company located in Bellevue, Washington. FluidX minted a popular NFT collection called "Red", which is filled with artwork of red alpacas in various playful poses. FluidX minted the "Red" collection for sale. To create excitement for the "Red" collection, FluidX gives 500 of the NFTs from the "Red" collection to people attending the Northwest annual alpaca celebratory convention in Bellevue, Washington.

Result: FluidX is making use as a consumer of the 500 NFTs it gives away. The use of the NFTs represent the use of a digital good. Use tax is imposed on the use of digital goods in Washington as a consumer, absent exemption. No exemptions apply under the facts. FluidX is subject to use tax on the value of the NFTs that it used as a consumer. To report and pay the tax, FluidX must file a use tax return or report its use tax on its combined excise tax return.

Example 8 – NFT used for a commercial purpose

Facts: North Pole Pals LLC ("North") is an art company located in Tacoma, Washington. North operates software that allows persons to burn NFTs. North minted 10,000 penguin NFTs for resale of which 1,000 have been sold. North offers to pay any owner of a penguin NFT \$1.00 for each penguin NFT they agree to burn. The purpose of the program is to create excitement and scarcity in the penguin NFT market, and thereby increase the interest in and value of the remaining NFTs it is seeking to sell. If a customer burns one or more penguin NFTs in a year, as a free bonus North will mint and transfer to the customer an NFT of a polar bear in repose. The polar bear is in black sunglasses and is North's mascot, as part of a limited

special collector edition. Generally, North's polar bear NFT line is a line of collectible digital good artwork that North mints for resale.

Result: The use of the NFTs represents the use of a digital good. Use tax is imposed on the use of digital goods in Washington as a consumer when sales tax is not paid, absent exemption. No exemptions apply under the facts. Use tax is due at the combined state and local rate for Tacoma. The measure of the tax is the true value of the polar bear NFT as of the date North provided the NFT to its customer. To report and pay the tax, the taxpayer must file a use tax return or report its use tax on its combined excise tax return.

Example 9 – NFT purchased without sales tax paid

Facts: Casey is an art aficionado and resident of Ocean Shores, Washington. Casey purchases an NFT from CuttingEdge Art LLC while visiting their gallery in Oregon. Casey purchases an NFT created by Angsty, who is an artist that creates NFTs based on Edvard Munch's The Scream. Casey pays \$1,000 for the NFT, purchasing the NFT at the seller's business location. Oregon does not impose a retail sales tax; therefore, no sales tax is collected at the time of sale. Casey returns to Ocean Shores and accesses the NFT.

Result: Casey is making use as a consumer of the NFT. The use of the NFT represents the use of a digital good. Use tax is imposed on the use of digital goods in Washington as a consumer, absent exemption. No exemptions apply under the facts. Casey is subject to use tax due at the combined state and local rate for Ocean Shores. The measure of tax is the purchase price of the NFT that Casey paid. Casey must file a use tax return to report and pay the tax.

Example 10 – First use of an NFT that represents an underlying product

Facts: Li purchases an NFT from Loom NFTS ("Loom") while on a business trip in Portland, Oregon. Li pays \$10,000 for an NFT, purchasing the NFT at Loom's business location. The NFT represents a hand loomed rug, while the NFT itself is merely the image and serial number of the rug for identification purposes and has de minimis value. Oregon does not impose a retail sales tax; therefore, no sales tax is collected at the time of sale. Li takes the rug back to Vancouver, Washington, where she resides, and uses it to decorate her office.

Result: Li is making use as a consumer of the NFT. The NFT represents ownership of the underlying product, the hand loomed rug. Use tax is imposed on the use of the tangible personal property in Washington as a consumer, absent exemption. No exemptions apply under the facts. Li is subject to use tax due at the combined state and local rate for Vancouver, where she makes use of the rug. The measure of tax is the retail purchase price of the NFT that Li paid. Li must file a use tax return to report and pay the tax.

Reselling activities

Retailers and wholesalers that are regularly engaged in the business of reselling NFTs may use reseller permits,¹⁵ which allows businesses to purchase certain personal property without paying sales tax with the understanding that the goods will be resold without intervening use and sales tax will be collected from the retail purchaser. If you do not have a reseller permit but need to make purchases for resale without paying sales tax, you can pay retail sales tax on purchases and take a [Taxable Amount for Tax Paid at Source](#) deduction after the product has been resold; you can also [request](#) a refund.

For more information, see the Department's [Reseller permits](#) guide.

¹⁵ Investors purchasing NFTs for speculation purposes are not eligible for reseller permits.